

## **Assembly Bill No. 2161**

### **CHAPTER 680**

An act to amend Sections 50560, 50561, 50562, and 50563 of, and to add Section 50565 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 27, 2014. Filed with  
Secretary of State September 27, 2014.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2161, Chau. Affordable housing.

Existing law authorizes the Department of Housing and Community Development to approve an extension of a department loan, the subordination of a department loan to new debt, or an investment of tax credit equity under specified rental housing finance programs, subject to specified conditions.

This bill would include within these provisions the reinstatement of a qualifying unpaid matured loan, as defined. This bill would require a qualifying unpaid matured loan reinstated under these provisions to be treated as if its term has been extended from the expired due date for purposes of calculating obligations of the borrower to the department.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 50560 of the Health and Safety Code is amended to read:

50560. (a) Subject to the requirements of this chapter, the department may approve an extension of a department loan, the reinstatement of a qualifying unpaid matured loan, the subordination of a department loan to new debt, or an investment of tax credit equity under one or more of the following rental housing finance programs: the original Rental Housing Construction Program established by Chapter 9 (commencing with Section 50735), the Special User Housing Rehabilitation Program established by Section 50670, the Deferred Payment Rehabilitation Loan Program established by Chapter 6.5 (commencing with Section 50660), the rental component of the California Natural Disaster Assistance Program established by Chapter 6.5 (commencing with Section 50671), the State Earthquake Rehabilitation Assistance Program established by Chapter 6.5 (commencing with Section 50671), the rental component of the California Housing Rehabilitation Program established by Section 50668.5, the component of the Rental Housing Construction Program funded with bond proceeds governed by Section 50771.1, the Family Housing Demonstration Program established by Chapter 15 (commencing with Section 50880), and the

Families Moving to Work Program established by Chapter 15 (commencing with Section 50880).

(b) Once the department has approved a loan extension, reinstatement of a qualifying unpaid matured loan, subordination, or tax credit investment pursuant to this chapter, the statutes enumerated in subdivision (a), and the regulations promulgated pursuant to these statutes, shall no longer apply to developments restructured pursuant to this chapter. These developments shall instead be governed by this chapter and guidelines adopted pursuant to subdivision (h).

(c) All projects restructured pursuant to this chapter shall comply with the affirmative marketing and language accessibility requirements set forth in Section 50736 of this code and Section 65863 of the Government Code.

(d) The department may approve an extension of a loan, the reinstatement of a qualifying unpaid matured loan, the subordination of a department loan to new debt, or an investment of tax credit equity if it determines that the project has, or will have after rehabilitation or repairs, a potential remaining useful life equal to or greater than the term of the restructured loan.

(e) The department may subordinate its loan to refinance existing senior debt only as necessary for project feasibility and to reimburse borrower advances for predevelopment costs, recent capital improvements, and recent operating deficits.

(f) If the extension of a department loan, the reinstatement of a qualifying unpaid matured loan, the subordination of a department loan to new debt, or an investment of tax credit equity will result in a rent increase for tenants of a development, the department may only subordinate a loan to senior debt if necessary to increase the feasibility of a project and to fund reasonable rehabilitation or improvements including soft costs. The application to refinance shall include a third-party analysis that supports the need for refinancing.

(g) The department may approve additional senior debt only as necessary to finance rehabilitation or repairs, including soft costs, that are modest in size, scope, and cost, as determined by the department.

(h) It is the intent of the Legislature in enacting this chapter to provide to the department the flexibility necessary to maintain the quality of the affordable rental housing units for which the state has already made a significant public investment. The department may implement this chapter through guidelines that shall not be subject to Chapter 2.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code. These guidelines shall be developed through the following process:

(1) The department shall provide a notice of proposed action as described in Section 11346.5 of the Government Code to the public at least 21 days before the close of the public comment period.

(2) The department shall schedule at least one public hearing as described in Section 11346.8 of the Government Code before the close of the public comment period.

(3) The department shall maintain a rulemaking file as described in Section 11347.3 of the Government Code.

(4) The final version of the guidelines shall be accompanied by a final statement of reason as described in subdivision (a) of Section 11346.9 of the Government Code.

(5) The rules and guidelines shall be effective immediately upon adoption by the department.

SEC. 2. Section 50561 of the Health and Safety Code is amended to read:

50561. (a) The department may approve an extension of an existing rental housing development loan, the reinstatement of a qualifying unpaid matured loan, the subordination of a department loan to new debt, or an investment of tax credit equity as long as the rental housing development is being operated in a manner consistent with the regulatory agreement and the development requires an extension in order to continue to operate in a manner consistent with this chapter. Each extension shall be for a period of not less than 10 years and each extension shall not exceed 55 years, or 58 years if needed to match the term of tax credit restrictions. The interest rate shall be 3 percent simple interest. All loan payments shall be deferred for the full term of the loan, except for residual receipts payments. These residual receipts payments shall be structured to avoid reducing the amount of payments on local public agency loans resulting solely from changes in the payment terms on the department's loan, and not resulting from fees or other payments to the borrower, and shall otherwise be consistent with the provisions of the department's Uniform Multifamily Regulations or successor regulations. The department may charge a monitoring fee to cover the aggregate monitoring costs it incurs in years that the loan is extended and charge a transaction fee to cover its costs for processing restructuring transactions. The department may waive or defer some or all fees, if it determines that a particular development or class of developments does not have the ability to make these payments. In determining the fees and payments to be charged, the department shall seek to share monitoring activities with other regulatory agencies and to minimize the impact on tenants with the lowest incomes and on the capacity of the developments to support private debt or secure tax credit investments.

(b) To the minimum extent necessary to support new debt to pay for rehabilitation, rents for assisted units in these developments may be adjusted. This rehabilitation shall be determined by the department to be demonstrably necessary, based on third-party assessment and on the department's own inspection. Assisted units in developments with a specific, department-approved plan to undertake the necessary rehabilitation, at a level that equals or exceeds the minimum per-unit rehabilitation cost standards under the low-income housing tax credit program, may be adjusted as follows:

(1) For developments originally financed under the bond-funded component of the Rental Housing Construction Program pursuant to Section 50771.1, and the Family Housing Demonstration Program, rents may be increased up to a maximum of 30 percent of 60 percent of area median income, for units designated in the development's original regulatory

agreement as lower income units, and up to a maximum of 30 percent of 35 percent of area median income, for units designated in the development's original regulatory agreement as very low income units.

(2) For developments originally financed under other programs, rents for at least 35 percent of the assisted units, or as specified in the original regulatory agreement governing the development, whichever is greater, shall be restricted to the midlevel target used by the Multifamily Housing Program. Rents for the balance of the assisted units may be increased up to a maximum of 30 percent of 60 percent of area median income. For purposes of this paragraph, "midlevel target used by the Multifamily Housing Program" shall mean either of the following:

(A) For counties with an area median income of 110 percent or less of state median income, it shall mean 30 percent of 30 percent of state median income, expressed as a percentage of area median income.

(B) For counties with an area median income that exceeds 110 percent of the state median income, it shall mean, 30 percent of 35 percent of state median income, expressed as a percentage of area median income.

(c) Rent increases for tenants living in assisted units at the time of restructuring pursuant to this chapter shall be limited as follows:

(1) For existing tenants with incomes not exceeding 35 percent of area median income, increases shall be limited to 5 percent per year, until the rents reach the levels set under subdivision (b).

(2) For existing tenants with incomes exceeding 35 percent of area median income, increases shall be limited to 10 percent per year, until they reach the levels specified in paragraphs (1) and (2) of subdivision (b) of Section 50561.

(3) It is the intent of the Legislature that rent increases for existing tenants authorized by this subdivision shall not be greater than necessary to ensure the financial feasibility of the project. The projected maximum rent for tenants in assisted units, as determined by subdivision (b), shall not exceed 50 percent of the household's actual income. This requirement shall be applied using maximum rent levels and household incomes determined at the time of restructuring or at the time of the department's approval of the restructuring.

(4) If the refinance of a loan results in a rent increase, the project sponsor shall provide tenants with the following notifications:

(A) Notice six months prior to the scheduled rent increase with an estimate of the amount of the increase.

(B) Notice 90 days prior to the actual increase with the exact amount of the new rent.

(d) If existing tenants move, the rent for these units may be increased immediately up to the level specified in paragraphs (1) and (2) of subdivision (b). The income limit for new tenants shall correspond with the rent limit set pursuant to paragraphs (1) and (2) of subdivision (b).

(e) Once rents achieve the levels set forth in paragraphs (1) and (2) of subdivision (b), income levels and rent limits shall be calculated consistent with the calculation methodology used under the Low Income Housing Tax

Credit program and the Multifamily Housing Program, and rent increases shall be based on increases in the area median income.

(f) Eligible households displaced as a result of rehabilitation pursuant to this section shall be accorded first priority in occupying comparable units in the development from which they were displaced, subsequent to rehabilitation. Tenants of rental housing developments repaired with assistance provided under this chapter who are temporarily or permanently displaced as a result of rehabilitation or other repair work, shall be entitled to relocation benefits pursuant to, and subject to, the requirements of Section 7260 of the Government Code. Sponsors of assisted rental housing developments shall be responsible for providing the benefits and assistance. The costs of the benefits and the assistance provided to tenants shall be eligible for funding by a loan provided pursuant to this section.

(g) The guidelines adopted by the department pursuant to subdivision

(h) of Section 50560 shall be patterned after the regulations governing the Multifamily Housing Program, including the Uniform Multifamily Regulations, except that the department may adopt different standards for the following factors:

(1) Commercial vacancy loss assumptions must reflect project operating history.

(2) Debt service coverage ratios.

(3) Payment terms and principal amount of senior debt, considering financial market conditions, including costs and department risk, as determined by the department.

(4) Developer fee limitations shall be consistent with California Tax Credit Allocation Committee regulations for inclusion in the basis for projects receiving 9 percent tax credits, for projects receiving the special rent increases contemplated by this chapter, and, consistent with the requirements of other funding sources, for projects not receiving special rent increases.

(5) Replacement reserve deposit amounts must be based on projected costs over 20 years, adjusted for inflation, and as shown in an independent replacement reserve analysis.

(h) It is the intent of the Legislature in enacting this section that the department shall manage its reserves for the original Rental Housing Construction Program in a manner that will allow for the continuation of benefits to current low-income tenants for the longest period of time possible up to the term of the original regulatory agreement or the depletion of the annuity funds, whichever occurs first. Accordingly, rents for those households in units subsidized by the annuity fund established pursuant to Section 50748 may be increased to 30 percent of household income. Any household affected by the rent increase permitted by this subdivision shall be given at least 90 days advanced notice of the increase.

(i) (1) The department shall, within available resources, post on its Internet Web site information regarding household incomes and rents for developments approved for restructuring.

(2) The information shall be provided within six months of a restructuring and, thereafter, no less than every three years.

(3) The information shall include the following or similar information:

(A) The monthly rent of each household at the time of restructuring.

(B) The current monthly rent of each household.

(C) The annual income of each household as a percentage of area median income at the time of restructuring.

(D) The current income of each household as a percentage of area median income.

SEC. 3. Section 50562 of the Health and Safety Code is amended to read:

50562. (a) If a department loan is extended or subordinated, the department approves the reinstatement of a qualifying unpaid matured loan, or a new tax credit investment occurs, then the department shall enter into a new regulatory agreement with the development's owner, or amend the existing agreement. The agreement shall be binding upon the development's owner and successors in interest upon sale or transfer of the development property, regardless of any prepayment of the loan. The agreement shall be recorded in the office of the county recorder in the county in which the development is located. The new or amended regulatory agreement shall:

(1) Set standards for tenant selection to ensure occupancy by the eligible households.

(2) Govern the terms of occupancy agreements.

(3) Restrict rents for assisted units, consistent with this chapter.

(4) Provide for periodic inspections by the department.

(5) Require occupancy and financial reports, and financial audits for the development.

(6) Govern the use of operating income for the development.

(7) Govern the use of reserves for the development.

(8) Have a term for not less than the term of the loan, including any extension.

(9) Include other provisions necessary to carry out the purposes of this chapter.

(b) The development's owner shall agree to replace or amend any other loan document to accomplish the purposes of this chapter.

SEC. 4. Section 50563 of the Health and Safety Code is amended to read:

50563. (a) Sections 50560 and 50562 shall apply to the restructuring of loans for group homes, except as modified in this section.

(b) The department may approve an extension of a department loan at the end of the current loan term to an existing owner of a group home, or the reinstatement of a qualifying unpaid matured loan to an existing owner of a group home, as long as the group home is being operated in a manner consistent with the regulatory agreement and the group home requires an extension in order to operate in a manner consistent with this chapter. The extension may be for a period of no less than 10 years and up to 30 years.

(c) The guidelines adopted by the department pursuant to subdivision (h) of Section 50560 may simplify requirements as appropriate to group homes and may include a limitation on occupancy of vacant units or rooms to extremely low-income households, rent limitations appropriate to required income levels, requirements that property be maintained, financial reporting, and other provisions as determined necessary by the department.

(d) Loan terms contained in the existing promissory note shall apply during the period of the loan extension. All unpaid principal and interest shall be due at the end of the extension. However, the department may require periodic payments of principal or interest, or both, during the extension period. If the borrower repays the loan prior to the end of the extension, regulatory requirements shall be removed. As necessary to generate sufficient revenue to cover the cost of processing loan transactions and long-term monitoring of program requirements, the department may also assess loan processing and monitoring fees. This subdivision shall not authorize a rent increase that exceeds 30 percent of the household's actual income, based upon the most recent income certification.

(e) Rent increases for tenants living in assisted units at the time of restructuring pursuant to this chapter shall be limited as follows:

(1) For existing tenants with incomes not exceeding 30 percent of area median income, rent increases shall be limited to 5 percent per year until rents reach the levels for targeted income levels specified in the regulatory agreement.

(2) For existing tenants with incomes exceeding 30 percent of area median income, rent increases shall be limited to 10 percent per year until rents reach the levels for targeted income levels specified in the regulatory agreement.

(f) It is the intent of the Legislature in enacting this chapter that the department shall manage its reserves for the original Rental Housing Construction Program in a manner that will allow for the continuation of benefits to current low-income tenants for the longest period of time possible up to the term of the original regulatory agreement or the depletion of the annuity funds. Accordingly, rent subsidies shall be continued only for units occupied by lower income tenants who were in residence at the time of the extension authorized under this section and rents for those households shall be increased to 30 percent of household income.

SEC. 5. Section 50565 is added to the Health and Safety Code, immediately following Section 50564, to read:

50565. (a) For purposes of this chapter, "qualifying unpaid matured loan" shall mean either of the following:

(1) A loan made pursuant to the programs listed in subdivision (a) of Section 50560 that is in material compliance, as determined by the department, with all loan terms and conditions, including, but not limited to, those required by the department loan documents or applicable statutes and regulations, or otherwise required by the department, other than having reached the due date of its promissory note without being paid.

(2) A matured loan that is not in compliance, as described in paragraph (1), and is being transferred to another borrower approved by the department.

(b) A reinstatement of a qualifying unpaid matured loan under this chapter shall be treated as if its term has been extended from the expired due date for purposes of calculating obligations of the borrower to the department.